

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CARDELL SANDERS, JR.,  
Plaintiff,

Case No. 20-cv-13014

vs.

Judge: Drain

GENESEE COUNTY, PAUL WALLACE, JAY PARKER, JOE LEE, JOHN DOE  
1, CHARTER TOWNSHIP OF FLINT, SHANA MCCALLUM, SEAN POOLE,  
LACEY LOPEZ, ALEX MINTO, JOHN DOE 2, DAVID LEYTON, and JANET  
MCLAREN,

Defendants,

And

GENESEE COUNTY,  
Counter-Plaintiff.

**MOTION TO ACCEPT RULE 26(F) REPORT WITHOUT PLAINTIFF'S  
SIGNATURE AND TO COMPEL PLAINTIFF'S COUNSEL TO PROVIDE  
REASONABLE DATES FOR PLAINTIFF'S DEPOSITION**

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Genesee County Defendants, by their attorney, Barney R. Whitesman, say:

1. The Rule 26 conference was conducted on February 15, 2021.

2. Genesee County Defendants' counsel forwarded a proposed Rule 26(f) report to the other lawyers for approval on February 19, 2021.

3. On the afternoon of March 1, 2021, the fourteenth day, Plaintiff's counsel responded with revisions which were unacceptable, inasmuch as they made it appear that Plaintiff's position was also the position of Genesee County Defendants in certain material respects.

4. Accordingly, counsel for Genesee County Defendants revised the proposed Rule 26(f) report to make the parties' separate positions clear and so there would be no misunderstanding as to which party advocated which position.

5. That revised Rule 26(f) report was submitted to Plaintiff's counsel for signature on March 4, 2021 after oral approval by Co-Defendants' counsel.

6. On March 15, 2021, Plaintiff's counsel forwarded a draft with revisions, to which both Defense counsel immediately made minor revisions to their respective positions, and forwarded same to Plaintiff's counsel for approval the same day.

7. Genesee County Defendants request that this Court accept the report without Plaintiff's counsel's signature if same is not approved and filed by March 19, 2021.

8. A copy of the report is appended as Exhibit A without the actual discovery disclosures which the parties previously exchanged, which are voluminous.

9. Further, Genesee County Defendants' counsel have been requesting proposed dates for Plaintiff's deposition for some time, beginning February 19, 2021. Requests were made on February 19, 2021, March 1, 2021 (twice), and March 9, 2021. On February 19, 2021, specific dates were proposed by Genesee County Defendants. See the attached Exhibit B.

10. On March 5, 2021, Plaintiff's counsel's response was only in May or June, but without specific dates. Genesee County Defendants contend that waiting until late May or June is not reasonable.

11. Plaintiff has not reasonably cooperated in framing a discovery plan for Plaintiff's deposition.

12. Movant has in good faith conferred by email with Plaintiff's counsel in an effort to obtain the relief sought without court action, but has not been able to obtain concurrence. Counsel for Flint Township concurs in the Motion as to the Rule 26(f) report and takes no position as to Plaintiff's deposition.

Wherefore, Genesee County Defendants request that their attached Rule 26(f) Report be accepted as filed if Plaintiff does not sign by March 19, 2021 and

that Plaintiff be ordered to provide at least 5 proposed dates for his deposition between now and May 5, 2021.

Pursuant to 28 USC 1746, I declare under the penalty of perjury that the foregoing is correct and true.

Date: 3/17/21

  
Barney R. Whitesman



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MCLAREN,

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And

GENESEE COUNTY,  
Counter-Plaintiff.

**BRIEF IN SUPPORT OF MOTION TO ACCEPT RULE 26(F) REPORT  
WITHOUT PLAINTIFF'S SIGNATURE AND TO COMPEL PLAINTIFF'S  
COUNSEL TO PROVIDE REASONABLE DATES FOR PLAINTIFF'S  
DEPOSITION**

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## **CONTROLLING AUTHORITY**

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## **APPENDIX**

EXHIBIT A – PROPOSED RULE 26(f) REPORT

EXHIBIT B – EMAILS

## STATEMENT OF THE ISSUES

I. WHETHER AN ORDER SHOULD ISSUE ACCEPTING THE RULE 26(f) REPORT WITHOUT SIGNATURE OF PLAINTIFF'S COUNSEL AND COMPELLING PLAINTIFF TO COOPERATE IN THE SCHEDULING OF HIS DEPOSITION?

## STATEMENT OF FACTS

Genesee County Defendants incorporate paragraphs 1 through 12 of their Motion as if set forth fully herein.

## ANALYSIS

### I. AN ORDER ACCEPTING THE RULE 26(f) REPORT AND COMPELLING PLAINTIFF'S COUNSEL TO PROVIDE REASONABLE DEPOSITION DATES IS WARRANTED.

Genesee County Defendants rely on FR Civ P 36(f) as to the Rule 26(f) report and FR Civ P 39(f) as to cooperation in framing a discovery plan. FR Civ P 30 authorizes depositions on oral examination.

Date: 3/17/21

Barney R. Whitesman  
Barney R. Whitesman

#### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on March 17th 2021

By: ☐ Overnight Courier ☐ FAX ☐ E mailed  
☐ Hand Delivered ☐ U.S. Mail ☒ E filed  
☐ Certified Mail ☐ Scanned ☐ Other

Signature Joanne J. Austice